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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Nevada)**

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Conservatorship of the Person and  
Estate of DEBORAH M.

C062747

(Super. Ct. No. LPS0076)

NEVADA COUNTY PUBLIC GUARDIAN,  
  
Petitioner and Respondent,

v.

DEBORAH M.,  
  
Objector and Appellant.

Deborah M. appeals from an order appointing the Public Guardian of Nevada County as conservator of her person and estate under the Lanterman-Petris-Short Act (LPS Act). (Welf. & Inst. Code, § 5000 et seq.)<sup>1</sup> She claims there was insufficient evidence to support the jury's finding that she was gravely disabled and that the trial court erred in imposing special disabilities on her pursuant to section 5357. We shall affirm.

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL BACKGROUND**

On June 24, 2009, the Public Guardian of Nevada County filed a petition for appointment as conservator for Deborah pursuant to section 5350 et seq.

The petition was tried to a jury on August 11, 2009. The People called expert witness Dr. Eric Rubinstein, a psychiatrist for Turning Point Community Programs, a private social services agency that contracts with Nevada County Adult Mental Health. The doctor stated that he had evaluated Deborah nine times since April of 2008, the last evaluation taking place on June 4, 2009. Rubinstein diagnosed Deborah as suffering from "moderately severe" schizophrenia, paranoid type, a condition manifested by delusions of an entitlement to a nonexistent \$500,000 inheritance, a belief that she did not have a mental disorder, and allegations that the psychiatric staff had kidnapped her and poisoned her food. He noted that her food delusions were so severe that, at the time of her last evaluation, she had lost 11 1/2 pounds in three weeks from not eating.

Dr. Rubinstein testified that Deborah refused to accept a prescription for antipsychotic medication. Although she agreed to take medication under previous conservatorships and court orders, "as soon as conservatorships were dropped, she would stop and run into serious trouble." According to the doctor, "[w]hen [Deborah] wasn't taking [medication], she would become increasingly suspicious about food, had difficulty with the form of her thought, started not eating, . . . and the pattern [was]

that she ended up hospitalized and then going to a locked psychiatric facility."

Dr. Rubinstein stated that Deborah could not provide for herself, and family members were unavailable to assist her. He opined that unless Deborah accepted medication, "at best, she will continue to be hospitalized and conserved on and off, and continue this merry-go-round or, at wors[t], will stay for years in a locked psychiatric facility."

Heather Troncao, personal services coordinator for Turning Point, had worked with Deborah since January of 2008. Troncao testified that she did not see a great deal of improvement in Deborah's mental health, because she continued to refuse medication. Troncao doubted that Deborah could meet her basic needs because she had already been through three different conservatorships, and "[t]hrough every one of those, as soon as she got off conservatorship, she wanted to cut off communications with Turning Point."

Deborah's daughter, Laura L., testified that Deborah had "been demonstrating very erratic, irrational behavior for the past 13 [to] 14 years." According to Laura, Deborah would continuously "get out [of the hospital] and be okay and then stop taking her medicine again and, within two weeks, we would be right back to where we started again. She would go into another hospital." She stated that no family members could support Deborah, financially or otherwise.

Deborah denied suffering from schizophrenia, but stated that she had posttraumatic stress disorder. She testified that she "ha[d] not taken antipsychotic medication for six years" and would not do so if released. When asked about her future plans, she admitted that she did not have a place to stay and had not held a job in four years. However, she would "sweep floors" and "clean out toilets."

### **PROCEDURAL BACKGROUND**

The jury determined that Deborah was presently gravely disabled due to a mental disorder. The trial court appointed the public guardian as conservator of her person and estate and imposed special disabilities pursuant to section 5357, denying her rights to possess a firearm, drive, enter into contracts, and refuse medical treatment for her grave disability.

### **DISCUSSION**

#### **I. Substantial Evidence of Grave Disability**

##### ***A. Danger to Self***

Deborah claims that the evidence was insufficient to support the jury's finding that she was gravely disabled. She asserts that the LPS requires a finding that she was a significant physical danger to herself due to a life-threatening inability to provide for food, clothing, and shelter and that the evidence did not meet that high standard.

The LPS Act is a civil commitment scheme that provides for short-term detention of mentally disordered individuals.

(§ 5000 et seq.) "Under the LPS Act, a person who is dangerous

or gravely disabled due to a mental disorder may be detained for involuntary treatment.” (*Ford v. Norton* (2001) 89 Cal.App.4th 974, 979.) “[I]n order to establish that a person is ‘gravely disabled,’ the evidence adduced must support an objective finding that the person, due to mental disorder, is incapacitated or rendered unable to carry out the transactions necessary for survival or otherwise provide for her basic needs of food, clothing, or shelter.” (*Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 (*Smith*).)

We apply the substantial evidence test to determine whether the record supports a finding of grave disability. (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577 (*Walker*).) Substantial evidence includes circumstantial evidence and reasonable inferences drawn therefrom. (*Ibid.*) The testimony of a single witness is sufficient to support a finding of grave disability. (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 697.)

Deborah’s apparent attempt to manufacture an additional “dangerousness” requirement for a finding of grave disability is unpersuasive. No independent finding of dangerousness is required because it is inherent in a finding of inability to provide for one’s basic needs. This concept is illustrated by the quotation from the same case Deborah cites, *Doe v. Gallinot* (1979) 486 F.Supp. 983, affirmed (1981) 657 F.2d 1017: “Standards for commitment to mental institutions are constitutional only if they require a finding of dangerousness

to others or to self. [Citations.] . . . [¶] California's 'gravely disabled' standard is not too vague to meet this test. It *implicitly* requires a finding of *harm to self: an inability to provide for one's basic physical needs.*" (*Doe v. Gallinot, supra*, 486 F.Supp. at p. 991, italics added.) Thus, a finding of grave disability--an inability to provide for one's basic physical needs--implicitly embraces the concept that the conservatee poses a danger to herself. No additional finding was required.

Deborah also asserts the evidence of her disability was similar to the appellant in *Smith, supra*, 187 Cal.App.3d 903, i.e., a harmless mentally ill person whose condition did not warrant conservatorship. We disagree.

Smith was a 43-year-old mother of seven with no fixed income or home address, who was adjudicated gravely disabled under the LPS Act. She conducted an around-the-clock vigil outside a local church and had been jailed (but never convicted) on ten occasions for disturbing church services. (*Smith, supra*, 187 Cal.App.3d at p. 906.) At the court trial, a psychiatrist diagnosed Smith as suffering from a paranoid delusion, manifested by her fixation surrounding the church. (*Id.* at p. 907.) The psychiatrist opined that she was "gravely disabled" because her mental disorder "caused behavior which brought her into conflict with the community." (*Ibid.*) However, he admitted that "her cognitive intellect and most of her personality was intact and . . . she could feed and clothe

herself and provide for her own place to live." (*Ibid.*) Other witnesses testified that they had given Smith food and money over the past year and that "'lots of people offered to help her.'" (*Ibid.*)

The *Smith* court reversed the judgment, holding that "[b]izzare or eccentric behavior, even if it interferes with a person's normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival." (*Smith, supra*, 187 Cal.App.3d at pp. 909, 911.) Nonetheless, the court made it clear that its "conclusion might have changed had more extensive testimony on the effect of appellant's behavior on her health and well-being been elicited, or a more thorough investigation properly introduced into evidence been presented." (*Id.* at p. 910.)

Deborah's situation is not comparable to *Smith*. Unlike Smith, whose cognitive ability was intact and who was able to survive on her own, Deborah was a paranoid schizophrenic, whose inability to provide for herself was life-threatening. She had already been through three conservatorships, and on each occasion, her refusal to accept medication ultimately resulted in hospitalization. She had not held a job in four years and refused to accept Social Security disability (SSI) payments. While Smith had the support of members of the community to meet

her basic needs, the testimony showed that no one was willing or able to support Deborah, financially or otherwise.

In addition, several witnesses described how Deborah's behavior had adversely affected her well-being. Dr. Rubinstein testified that Deborah's schizophrenia was manifested by multiple delusions, including a food delusion so severe that she had lost 11 1/2 pounds in three weeks. Deborah's adamant denial of her condition and refusal to take medication resulted in a "merry-go-round," whereby she was constantly in and out of hospitals. (See *Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446-447 [lack of insight may be considered in determining whether conservatee is gravely disabled].) Rubinstein's assessment was corroborated by Heather Troncao and Deborah's daughter, each of whom stated that Deborah's resistance to treatment had caused erratic behavior and hospitalization.

In sum, there was ample evidence to support the jury's finding that Deborah was unable to meet her basic needs and therefore suffering from a grave disability.

### ***B. Difficulty Controlling Behavior***

In *In re Howard N.* (2005) 35 Cal.4th 117, the California Supreme Court held that principles of due process require that a statute authorizing indefinite involuntary civil commitments for criminal youths include proof of the person's inability to control dangerous behavior. (*Id.* at pp. 131-132.)



Although *Howard N.* did not address the LPS Act, Deborah cites it to support a claim that the LPS Act is unconstitutional unless it includes an element of serious difficulty in controlling physically dangerous behavior. She contends that had such a finding been required, the evidence would not have supported it. As Deborah acknowledges, however, this novel argument was never raised in the trial court.

It is well established that “[u]nder California law, a defendant’s failure to object in the trial court, even to errors of constitutional dimension, may lead to forfeiture of [her] claim of error on appeal.” (*People v. Esquibel* (2008) 166 Cal.App.4th 539, 556.) Deborah’s constitutional challenge to the LPS Act is forfeited on appeal because she failed to raise it in the trial court. (See *People v. Barnum* (2003) 29 Cal.4th 1210, 1224-1225, fn. 2 [forfeiture of Fifth Amendment claim of self-incrimination]; *People v. Seaton* (2001) 26 Cal.4th 598, 634-637 [forfeiture of claim that jury was racially or ethnically biased].)

Applicability of this principle is compelled here, because Deborah’s argument reduces itself to a claim that the trial court erred in failing to tell the jury that “serious difficulty in controlling physically dangerous behavior” was an additional element needed to support a finding of grave disability. “A party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or

amplifying language. (*People v. Lang* (1989) 49 Cal.3d 991, 1024 (*Lang*).)

Here, neither party objected to the giving of CACI No. 4002, the standard jury instruction defining "gravely disabled," nor did the defense ask for any supplemental instructions. Since Deborah did not propose any addition to or amplification of the standard instruction, her claim is forfeited. (*Lang, supra*, 49 Cal.3d at p. 1024; *People v. Andrews* (1989) 49 Cal.3d 200, 218.)

## **II. Substantial Evidence of Special Disabilities**

In addition to appointing the public guardian as conservator of Deborah's person and estate, the trial court imposed special disabilities pursuant to section 5357, denying Deborah the right to possess a firearm, drive a motor vehicle, enter into contracts, or refuse medical treatment for her grave disability.

Deborah contends that the evidence was insufficient to support the imposition of these disabilities. She claims that special disabilities cannot be imposed based only on a general finding of grave disability and requests a remand for further proceedings on the special restrictions.

Section 5357 allows a court to impose specific disabilities on a conservatee. While the trial court "must separately determine . . . the disabilities imposed on the conservatee," (*Conservatorship of Christopher A.* (2006) 139 Cal.App.4th 604, 612, citing *Walker, supra*, 206 Cal.App.3d at p. 1578), a

*specific, on-the-record statement of the reasons for each disability imposed is not required (Conservatorship of George H. (2008) 169 Cal.App.4th 157, 165, italics added).* Instead, we follow the usual rules on appeal and review the record as a whole in the light most favorable to the trial court judgment to determine whether it discloses substantial evidence. (*Walker, supra*, 206 Cal.App.3d at p. 1577.) For the reasons set forth below, we find substantial evidence to support the imposition of each disability.

#### ***A. Right to Possess a Firearm***

Section 8103, subdivision (e)(1) states that a conservatee cannot possess a firearm or any other deadly weapon if, at the time the conservatorship was ordered, the trial court finds that "possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others." Here, the trial court complied with section 8103 when it denied Deborah her right to possess a firearm at the time her conservatorship was ordered. (§ 5357, subd. (f).)

Substantial evidence supported the court's implied finding that it would present a danger to Deborah or others if she were allowed to possess a firearm. Dr. Rubinstein testified extensively regarding Deborah's schizophrenia and delusional beliefs, including her paranoia that the psychiatric staff had kidnapped her and poisoned her food. Deborah admitted that she had acted violently towards a family member, "poking" her ex-

husband with a knife while she was off her medication. This evidence was sufficient to support the firearm restriction.

### ***B. Right to Drive***

The evidence of Deborah's active psychosis also supports the restriction on her right to drive. (§ 5357, subd. (a).) The trial court could reasonably conclude that Deborah, who suffered from paranoid delusions and actively resisted taking antipsychotic medication, would be a danger to herself or others if she were allowed to operate a motor vehicle upon the public roads.

### ***C. Right to Contract***

For similar reasons, we uphold the court's denial of Deborah's right to enter into contracts. (§ 5357, subd. (b).) Deborah needed protection from the consequences of her mental disorder. (See *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 237 (conc. & dis. opn. of Clark, J.).) Deborah's erratic behavior, coupled with her delusion of entitlement to a nonexistent \$500,000 inheritance, clearly left her vulnerable to contractual exploitation by others.

### ***D. Right to Refuse Medical Treatment***

Deborah also challenges the court's restriction on her right to refuse medical treatment for her disability, contending that her conservator must first apply to the court for such a restriction and the court must then make an express finding of incompetency. We disagree.

Section 5358 states that "[a] conservator shall also have the right, *if specified in the court order*, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled." (§ 5358, subd. (b), italics added; see § 5357, subd. (d).) The trial court complied with this statute by specifying in its written order that Deborah could not refuse medical treatment for her grave disability. As noted earlier, there is no requirement that the court make special findings for each restriction. (*Conservatorship of George H.*, *supra*, 169 Cal.App.4th at p. 165.)

Substantial evidence supports a finding that Deborah was not competent to make an intelligent decision to refuse treatment for her mental disability. "Judicial determination of the specific competency to consent to drug treatment should focus primarily upon three factors: (a) whether the patient is aware of his or her situation . . . ; (b) whether the patient is able to understand the benefits and the risks of, as well as the alternatives to, the proposed intervention . . . ; and (c) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought [citation] and otherwise participate in the treatment decision by means of rational thought processes." (*Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1322-1323.)

The evidence showed Deborah was in denial about her mental disorder and, because of this lack of awareness, was unwilling to accept the need for treatment. Deborah's past refusals to take medication for her schizophrenia had left her delusional, irrational and hospitalized. Based on this evidence, the trial court could conclude that Deborah was not capable of making an informed or intelligent decision on the risks and benefits of subjecting herself to psychiatric treatment.

### **DISPOSITION**

The order appointing the conservator is affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, SCOTLAND, P. J.

\_\_\_\_\_, NICHOLSON, J.